

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

UNPUBLISHED
January 12, 2001

v

KURT RICHARD-KRAUTNER KING and
DENNIS GEORGE DEBOL

No. 220077
Isabella Circuit Court
LC No. 99-008829-FH

Defendants-Appellees.

Before: Doctoroff, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Defendants were charged with carrying a concealed weapon, MCL 750.227; MSA 28.424. Their cases were consolidated for trial, and defendants moved to suppress evidence discovered during a vehicle search on the ground that the evidence was obtained in violation of the Fourth Amendment's prohibition against unreasonable searches and seizures. The trial court granted defendants' motion and suppressed the evidence. The prosecution appeals by leave granted. We reverse and remand.

In the early morning hours of January 30, 1999, a 911 dispatcher in Isabella County received a call from an unknown individual reporting a disturbance at a residence on Douglas Street in Mount Pleasant. The caller told the dispatcher that a fight was about to break out and that people were running around with hockey sticks, hitting parked cars. The dispatcher tried to obtain the caller's name, but the caller hung up.

Using the 911 system's caller identification function, the dispatcher reestablished contact with the caller. The caller told the dispatcher that there were people in the parking lot of the residence trying to start fights with the caller and other people, and that as they were getting into their vehicle to leave, a handgun was waved around. The caller did not provide any information regarding the vehicle's occupants, but he described the vehicle as a Ford Explorer that looked blue. The dispatcher put out a "be on the lookout" (BOL) call to patrol cars in the area, stating that people carrying hockey sticks were starting a fight at a residence on Douglas Street and a gun had been displayed before the suspects drove away in a blue Ford Explorer.

A Mount Pleasant police officer on routine patrol in the area heard the BOL and drove to the location. While traveling south on Douglas, the officer observed what he believed to be a

blue Ford Explorer approximately one city block from the address specified in the BOL. The officer testified the vehicle caught his eye because it was close to the location mentioned in the BOL, its description matched that of the vehicle in the BOL, and only a short time had passed since he heard the BOL.

The officer followed the vehicle a short distance until it pulled into the parking lot of a nearby apartment building. As he entered the parking lot, the officer turned on the patrol car's overhead lights and shone a spotlight on the vehicle. He then noticed hockey sticks in the cargo area of the vehicle. The officer called for back up and two other Mount Pleasant police officers joined him to assist. The three officers removed defendants from the vehicle, patted them down for weapons, handcuffed them, and placed them in a patrol car. Defendants' vehicle was searched, and a handgun and nun-chucks were found in the vehicle. Defendants were subsequently arrested and, after they were given their *Miranda* rights, made incriminating statements to the police.

Defendants moved to suppress the evidence obtained as a result of the investigatory stop, arguing that the stop and subsequent search of the vehicle violated the Fourth Amendment's prohibition against unreasonable searches and seizures. After a hearing, the trial court found that the unknown 911 caller was inherently unreliable and the mere description of the vehicle and its proximity to the crime scene did not give the police officer reasonably articulable suspicion for stopping defendants' vehicle. The prosecutor contends that this conclusion is in error. We agree.

We review the factual findings of a trial court in a suppression hearing for clear error, and affirm unless this Court has a definite and firm conviction that a mistake has been made. *People v Custer*, 242 Mich App 59, 64; 618 NW2d 75 (2000). We review de novo the trial court's final ruling on the motion to suppress. *Id.*

The Fourth Amendment of the United States Constitution and a parallel provision in the Michigan Constitution guarantee the right of an individual to be free from unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. Because the Fourth Amendment is not a guarantee against all searches and seizures, whether police conduct constitutes an unreasonable search or seizure should be evaluated in light of the totality of the circumstances with which the police were confronted. *People v LoCicero*, 453 Mich 496, 501-502; NW2d (1996); *People v Armendarez*, 188 Mich App 61, 66-67; 468 NW2d 893 (1991). This Court should avoid an overly technical review of a police officer's common-sense assessment of probable criminal activity. *People v Christie*, 206 Mich App 304, 308; 520 NW2d 647 (1994).

A police officer is entitled to detain an individual for investigative purposes if the officer has a reasonably articulable suspicion that the person is engaging in criminal activity. *LoCicero*, *supra* at 501; *Terry v Ohio*, 392 US 1, 21; 88 S Ct 1868; 20 L Ed 2d 889 (1968). Although a minimum threshold of reasonable suspicion must be present to justify an investigatory stop, fewer facts are needed to establish the reasonableness of a stop of a motor vehicle. *LoCicero*, *supra* at 502; *People v Whalen*, 390 Mich 672, 682; 213 NW2d 116 (1973).

A tip from an unknown informant may be sufficient to justify an investigatory stop if the tip carries indicia of reliability to provide the police officer with reasonable suspicion of criminal activity. *Armendarez*, *supra* at 67; *Alabama v White*, 496 US 325, 332; 110 S Ct 2412; 110 L Ed

2d 301 (1990). In this case, the prosecutor argues that the tip from the unknown caller carried the requisite indicia of reliability to justify an investigatory stop. Considering the totality of circumstances of this case, we agree that the caller's anonymous tip provided the police officers with reasonably articulable suspicion.

Although the informant in this case refused to identify himself, he did provide the dispatcher with the address at which the alleged criminal activity was occurring and, after the informant hung up, the dispatcher was able to reconnect with the informant through caller identification. Despite his anonymity, the reliability of the informant's tip was enhanced by the fact the dispatcher was able to identify the location from which the call was placed and was able to contact the caller at the number provided by the caller identification system. As United States Supreme Court Justice Anthony Kennedy stated in a recent concurring opinion, the ability to trace the identity or location of a caller through caller identification may lend reliability to an otherwise anonymous tip. *Florida v JL*, 529 US 266, ___; 120 S Ct 1375, 1381; 146 L Ed 2d 254 (2000).

In addition, an anonymous tip is not inherently unreliable where the informant personally observes the criminal activity and the information is corroborated by the police within a reasonable time. *Armendarez*, *supra* at 68; *People v Faucett*, 442 Mich 153, 166; 499 NW2d 764 (1993). Here, the anonymous informant not only observed the criminal activity, but indicated that the suspects tried to start a fight with him. The informant also told the police that individuals carrying hockey sticks were hitting cars and waving a gun in a specific residential parking lot on Douglas Street and the individuals got into a blue Ford Explorer and drove away from the scene. A short time after this call, the police officer observed what appeared to be a blue Ford Explorer on a street only a few blocks from the location named by the informant. Once the officer followed the vehicle into a parking lot and shone a light on it, the officer observed hockey sticks in the vehicle. All of these facts observed by the police officer matched the description of the suspects given by the anonymous informant.

Further, the officer's suspicion becomes even more reasonable when the timing of the events is considered. It was unlikely that there were multiple Ford Explorers carrying hockey sticks roaming the streets of Mount Pleasant within blocks of the reported Douglas Street address in the wee morning hours of a January day. Although none of the individual circumstances of this case would be sufficient alone to justify the officer's suspicion, when the facts are viewed in their totality, it appears that the officer had reasonable suspicion to make an investigatory stop. We conclude that the trial court erred in ruling that the stop of defendants' vehicle was improper and in suppressing the evidence obtained as a result of the stop.

The prosecutor also argues that the search of defendants' vehicle following the investigatory stop was proper because the police had probable cause to conduct the search. The trial court did not reach this issue because it concluded that the investigatory stop of defendants' vehicle was improper and suppressed the evidence on that ground. Although this issue was not addressed by the trial court, we may consider constitutional issues where the record is sufficiently developed to facilitate review and the issue is decisive of outcome. *People v Grant*, 445 Mich 535, 547; 520 NW2d 123 (1994).

In order to justify a warrantless search, the police must show that their conduct fell within one of the narrow, specific exceptions to the warrant requirements of the United States and Michigan constitutions. *People v Kazmierczak*, 461 Mich 411, 417-418; 605 NW2d 667 (2000). Under the motor vehicle exception, police may search a vehicle without obtaining a warrant if probable cause exists to support the search. *Id.* at 418-419. This exception to the warrant requirement is premised on the exigency of the vehicle's ready mobility and on an individual's reduced expectation of privacy in a motor vehicle. *Pennsylvania v Labron*, 518 US 938, 940; 116 S Ct 2485; 135 L Ed 2d 1031 (1996); *People v Garvin*, 235 Mich App 90, 102; 597 NW2d 194 (1999). "If a car is readily mobile and probable cause exists to believe that it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more." *Labron, supra* at 940.

It is clear that the vehicle in this case was readily mobile. Therefore, the only question is whether the police had probable cause to conduct the search. Probable cause exists where there is a substantial basis for concluding that the search would uncover evidence of wrongdoing. *Garvin, supra* at 102. The determination whether probable cause existed to support the search should be made in light of the totality of the circumstances. *Id.* In addition, fewer foundational facts are required to support the reasonableness of searching a motor vehicle. *Whalen, supra* at 682. Here, the police had probable cause to believe that defendants were the individuals engaging in criminal activity in the Douglas Street parking lot based on the informant's description that matched the suspect's vehicle, the presence of hockey sticks, and the proximity to the crime scene. Further, the police were informed that the suspects were waving a gun, which would provide probable cause to believe there was a weapon in the vehicle. Because the vehicle was mobile and the police had probable cause to believe that it contained a weapon, their warrantless search of the vehicle was justified.

Reversed and remanded. We do not retain jurisdiction.

/s/ Martin M. Doctoroff
/s/ Joel P. Hoekstra
/s/ Jane E. Markey